

**Water Pollution Control Board**  
Effect of Recent Rulemakings  
(Effective Since 2003)  
May 10, 2006

**Rule Title: CSO Public Notification (#00-136)**

Project Manager: Cyndi Wagner

Effective Date: May 9, 2003

Measurements of Effectiveness:

1. Number of communities with Public Notification Plans submitted.
2. Number of communities with Public Notification Plans approved.
3. Number of communities with Public Notification Plans in operation.

Effectiveness of rule to date: All 104 CSO communities have submitted Public Notification Plans, and these plans have been approved by IDEM. These plans have since become operational and the public is now notified, in the manner detailed in each approved plan, when CSO events are likely to occur. This public notification can help people understand when the water is unsafe from a public health perspective. This rule implements one of the Nine Minimum Controls as required by the CSO community's NPDES Permit.

**Rule Title: Drinking Water Amendments (#01-348)**

Project Manager: Al Lao

Effective Date: May 31, 2003

Effectiveness of rule to date: This rulemaking adopted several federal regulations that public water systems would be required to meet even if there wasn't a state rule. The adopted regulations were the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Filter Backwash Recycling Rule (FBRR), the Stage 1 Disinfectants/Disinfection Byproducts rule (Stage 1 D/DBP), and the Public Notification Rule (PN). This rulemaking also repealed some obsolete Unregulated Contaminant Monitoring requirements which are also federal requirements.

The IESWTR affected systems serving more than 10,000 people using either surface water or ground water under the direct influence of surface water. There are 27 public water systems affected by this rule. The FBRR affects surface water systems which recycle any filter backwash water, spent thickener supernatant or other waters within their treatment process. This rule required notification to IDEM that the recycling occurs, with details of the recycling practice, as well as a requirement that systems recycle to the beginning of their treatment plant and keep recycling records onsite for inspection by IDEM. There are 6 systems affected by this rule. The Stage 1 D/DBP Rule affects several classes of systems, all of whom add a disinfectant in their treatment process. Some of these were already affected by the Total Trihalomethane (TTHM) monitoring requirements which have been in existence for many years. It added monitoring requirements for Haloacetic Acids and reduced the TTHM Maximum Contaminant Level. There are 578 systems affected by this rule. Of that number, 495

were newly affected by this rule. The PN rule changed requirements for public notification for violation of drinking water standards and/or monitoring requirements. There were already standards in place that affected all systems.

**Rule Title: Storm Water Rule 13 (#01-96)**

Project Manager: Cyndi Wagner

Effective Date: August 6, 2003

Measurements of Effectiveness:

1. Number of Communities with NOIs submitted
2. Number of Communities with NOIs approved.
3. Number of Communities with Stream Characterization/Storm Water Quality Management Plans submitted.
4. Number of Communities with Stream Characterization/Storm Water Quality Management Plans approved.
5. Number of Storm Water Management Plans implemented.

Effectiveness of rule to date: This Rule is required by Phase II of the federal storm water rules. The 149 MS4 communities have submitted Notices of Intent (NOIs) and stream characterizations. This past year, the focus of each of the MS4s has been to work towards development and approval of Storm Water Quality Management Plans. These plans outline specific actions that each MS4 will implement. The plan is required to address six minimum control measures, including Public Education, Public Involvement, Good House Keeping, Illicit Discharge, Construction, and Post Construction. Currently, the agency has issued 141 Notices of Sufficiency. The next step in the process includes implementation of the plans. As implementation progresses each MS4 is required to develop ordinances to implement a construction (76 Adopted), post Construction (61 Adopted), and an illicit discharge (72 Adopted) component.

MS4s are also required to submit annual reports to IDEM. The submittal date for annual reports varies with the NOI submittal date of each MS4. During this reporting period (April 2005 – April 2006) 66 annual reports have been submitted. The remainder of the annual reports are required to be submitted over the next several months.

**Rule Title: Land Application (#01-238)**

Project Manager: Bruce Palin/Lynn West/Jeff Harmon

Effective Date: August 6, 2003

Measurements of Effectiveness:

1. Number of permits issued.
2. Monitoring.
3. Staff time.

Effectiveness of rule to date: This rule amended the permit rule already in place. Four facilities must now notify rather than obtain a permit. Some facilities may have to do less frequent monitoring (i.e., just EPA standards), which costs less. The seasonal high water table monitoring was eliminated as a permit requirement. The rule amendments clarified the rule so that much less staff time is spent answering questions.

**Rule Title: Storm Water Rules 5 & 6 (#01-95)**

Project Manager: Cyndi Wagner

Effective Date: November 26, 2003

Measurements of Effectiveness:

1. Number of new NOIs Submitted to IDEM for both Rules 5 & 6.
2. Number of Rule 6 “No Exposure” Exclusions granted.
3. Clearer and more consistent rule.

The Storm Water construction rule, otherwise known as Rule 5, requires construction activities that disturb one acre or more to comply with the rule. The one acre threshold has brought additional projects under the rule. The indicator of effectiveness of this rule is that appropriate erosion and sediment control measures are now required to be implemented on smaller sites that can potentially generate sediment and impact water quality. During this reporting period (April 2005 – April 2006) staff processed 2,288 permits. There are approximately 10,390 active permits.

Administratively, staff has reduced the backlog of over 200 NOI’s. Response to submittals now occur within one week after the NOI’s are received from the Cashier’s Office.

Soil and Water Conservation Districts are currently continuing to assist IDEM with implementation of Rule 5. The assistance level varies from technical plan review and site investigation to local administrative activities (correspondence and an information source for rule requirements). In addition, the program received permission to fill four positions that will be working in the field to review plans, inspect sites, and provide training.

The MS4 program (described above) requires designated entities to develop their own local programs to address construction site runoff. As MS4s begin to assume this responsibility, the overall effectiveness to monitor construction sites statewide will be on the increase. This has already been demonstrated by those MS4s that are implementing their program.

Rule 6 addresses industrial operations that are exposed to storm water. There are currently 1622 active permits for this program. During this reporting period (April 2005 – April 2006) staff processed 314 new NOIs. Staff has also approved 139 no exposure requests. This is a provision in the rule to exclude facilities where the operator has eliminated the exposure of their operations to rain events.

**Rule Title: Allen County (#02-327)**

Project Manager: Nancy King

Effective Date: January 17, 2004

Measurements of Effectiveness:

1. Establishment of the Allen Co. on-site wastewater management district.
2. Fees for participation in the wastewater management district.

Effectiveness of rule to date: Allen County issued the first construction permit for an on-site residential sewage discharging disposal system located within the Allen Co. on-site wastewater management district in early-2005. This system will be constructed as soon as possible (weather dependant). Once constructed, the NOI for the general operating permit for this system will be submitted to IDEM.

**Rule Title: CAFO (NPDES) (#01-51)**

Project Manager: Bruce Palin/Lynn West/Dennis Lasiter

Effective Date: March 24, 2004

Measurements of Effectiveness:

1. Number of permits issued.
2. Obtained U.S.EPA authority

Effectiveness of rule to date: Of the 508 CAFOs, 307 have obtained coverage under a general permit and five individual permits have been issued. There are 8 individual permit applications and 25 general permit applications under review. A proposed change to this rule was preliminarily adopted by the WPCB on January 11, 2006. the date changes defers permitting obligations by the remaining farms identified, yet unpermitted as a CAFO. This change reflects what EPA is doing to their CAFO rule in response to the Federal Second Circuit Court of Appeals decision in February, 2005. The rule is still adequately fulfilling IDEMs obligation as a U.S.EPA CAFO-NPDES permitting authority.

**Rule Title: Fast Track (#03-129)**

Project Manager: John Elliott

Effective Date: March 16, 2005

Effectiveness of rule to date: U.S. EPA Region 5 conducted separate reviews of the water quality standards and NPDES program implementation portions of the Fast Track rulemaking. The water quality standards portion was approved October 3, 2005 with two exceptions. Approval was withheld for the site-specific criteria for cadmium applicable to the West Fork White River and the sulfate criterion. IDEM is preparing a rulemaking to remove the site-specific criteria for cadmium. IDEM expects U.S. EPA to grant conditional approval of the sulfate criterion in the near future. The NPDES program implementation portion of the rulemaking was approved March 2, 2006. This included approval of a revised memorandum of agreement (MOA) concerning the rules for the Great Lakes system. The Fast Track rulemaking resolved several issues in the original MOA.

In addition to updating the sulfate criterion, the Fast Track rulemaking changed the expression of aquatic life criteria for metals from acid soluble to dissolved and aquatic life criteria for cyanide from total to free. The rulemaking also changed the point of application of the total dissolved solids criterion from all waters to only public water system intakes. The changes concerning the sulfate and total dissolved solids criteria and the expression of aquatic life criteria for cyanide will impact applicable NPDES permits when they are issued, renewed or modified. The changes concerning the sulfate and total

dissolved solids criteria and the expression of aquatic life criteria for cyanide and metals may result in waterbodies being removed from the 303(d) list after they are reassessed. The Fast Track rulemaking added implementation procedures for conducting reasonable analyses using dissolved metal effluent data and for developing site-specific aquatic life criteria using the recalculation procedure. These procedures will be utilized as needed.

**Rule Title: Streamlined Mercury Variance (#03-130)**

Project Manager: Steve Roush

Effective Date: May 6, 2005 (EPA approval: December 21, 2005)

Measurements of Effectiveness:

1. Number of entities applying for variance
2. Number of variances granted

The rule was approved by EPA on December 21, 2005, and the applications, instructions, FAQs and Overviews for both municipal and industrial facilities have received final internal approval and are currently available on IDEM's website at <http://www.in.gov/ideM/water/publications/appsforms.html#smv>.

IDEM provided the Valparaiso WWTP with the municipal SMV application and supporting documents. We have yet to hear back as to when they intend to submit the SMV application. So far, that is the only facility planning an SMV submittal in the near future.

EPA did not approve the 327 IAC 5-3.5(4)(b)(1) for use because that provision will allow a variance for a new discharger. EPA stated in their letter that they are not acting on that provision at this time.

**Rule Title: 2005 Sunset (Readoption) (#05-24)**

Project Manager: Lawrence Wu

Effective Date: May 11, 2005

This rulemaking was required pursuant to IC 13-14-9.5, which provides for the expiration and readoption of administrative rules. A rule that was adopted under a provision of IC 13 and was in force on December 31, 1995, expires not later than January 1, 2002. All rules adopted after that date under IC 13-14-9, expire on January 1 of the seventh year after the year in which each rule takes effect. The rules listed to be readopted had an expiration date of January 1, 2006. IDEM chose to readopt all affected rules at one time rather than readopt each rule separately as its expiration date approached.

**Rule Title: Wetlands Activity Permits (#04-228)**

Project Manager: James Robb

Effective Date: June 24, 2005

Measurements of Effectiveness:

1. Number of notifications and applications received
2. Number of agency decisions
3. Percentage of permits presumptively issued after the review deadline

Effectiveness of rule to date: The Wetlands Section has begun implementation of the rule immediately and has received numerous notifications and applications. Specific statistics will be reported with the next update. Several areas of the permitting program have resulted in confusion, including:

- How does one determine the class of a wetland?
- What is meant by “complete” mitigation under 327 IAC 17-1-5(b)?
- How far back should the department look when making determinations on class and exemptions?
- What are the reasons for denial?
- What happens to the permit review time-frames when the applicant modifies their application?
- Does tract merging or splitting affect size exemptions limits?
- How many permits are needed for a single project?

The Wetlands Section is currently working through these issues in both the Wetland Science Advisory Group and the Wetland Policy Workgroup. The Wetland Science Advisory Group is continuing to generate recommendations on wetland classification. Working through the Wetland Policy Workgroup, we have also drafted three non-rule policy documents covering the most pressing issues listed above and have plans for more.

Perhaps our greatest concern, and one that we cannot alleviate through non-rule policy, is the complexity of the permitting program. Complexity appears to emanate from four main areas of the rule – classification, exemption, permitting of projects with multiple impacts and public noticing. Of these areas, the permitting of projects with multiple impacts and public noticing appear unnecessarily complex. In several cases a single project has contained both Waters of the US (requiring a State Water Quality Certification), and Waters of the State (requiring a State Regulated Wetland Permit). When the project has both Class I and Class II wetlands, separate State Regulated Wetland permits are needed with one being a General Permit with a 30 day review period and the other an Individual Permit with a 120 day review period. This does little to benefit the applicant – it only increases the workload for IDEM. Individual State Regulated Wetland permits require a public notice both when we receive a complete application, and when we issue our final agency decision.

Pre-application coordination, issuing permits and policy/procedure development currently consumes all Wetlands Section resources. This leaves little or no capacity for compliance and enforcement.

**Rule Title:**                    **Drinking Water Standards (#04-13)**

**Project Manager:**        Stacy Jones

**Effective Date:**          July 13, 2005

Effectiveness of rule to date: This rulemaking also adopted federal regulations that public water systems would be required to meet even if there wasn't a state rule. The affected rules are the Arsenic Rule, the Radionuclides Rule, and the Long Term 1 Enhanced

Surface Water Treatment Rule (LT1ESWTR). There were also corrections made to some existing federal regulations.

The Arsenic Rule affects 842 community public systems and 693 nontransient noncommunity public water systems. The community water systems had already been monitoring for arsenic at the existing MCL of 50 ppb, but the monitoring requirements for the nontransient systems are new, and the MCL has been reduced to 10 ppb. There are approximately 80 systems that may have trouble meeting the arsenic MCL. The Radionclides Rule includes a new monitoring requirement for uranium, and some monitoring for Radium-228. The majority of this sampling is done by the Indiana State Department of Health for the public water systems that are affected. The LT1ESWTR affects 27 surface water systems that serve less than 10,000 people. The requirements under this rule are similar to the requirements under the IESWTR which became effective in 2003.

**Rule Title: State Permits for Construction (Renewal) (#04-320)**

Project Manager: Lawrence Wu

Effective Date: August 19, 2005

Sunset legislation passed by the Indiana Legislature in 1996 requires agencies to readopt their rules on a seven year cycle or the rules expire. Under IC 13-14-9.5-4(a), IDEM readopted all Title 327 rules subject to expiration under one rule, the readoption date of which was January 10, 2001. Excluded from the 2001 readoption were rules that received public comment during the first comment period. 327 IAC 3-2 was not readopted in the first sunset rulemaking because comment was submitted during the first comment period. Other sections of the rule were amended in 1999; however, sections 1, 3, and 5 were not amended and, therefore, expired. This rulemaking adopted rule language exactly as contained in the expired sections to facilitate a complete construction permit process for wastewater treatment facilities and sanitary sewers under 327 IAC 3-2.